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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: SEP 26 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a [redacted] corporation that claims to be engaged in information technology consulting. The petitioner further claims to be a subsidiary of [redacted] located in the [redacted] The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), to serve as the president. The director determined that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity. The director also found that the petitioner had failed to establish that its parent foreign-based company had been doing business during the one-year period prior to filing.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

At issue in the director's decision is whether the beneficiary has been and will be performing managerial or executive duties.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily--
>
> (i) manages the organization, or a department, subdivision, function, or component of the organization;

[redacted]

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

In a letter dated October 23, 1997, the petitioner stated that the beneficiary:

is a very crucial part of the development and marketing of the various software products because of his rich background in all aspects of commercial and technical management and also has a good hands on experience in the development of various software both for commercial and non-commercial use.

The petitioner listed the beneficiary's duties as follows:

1. To plan, direct and control the growth of Hyper Technology in the United States.
2. To be totally responsible for the entire operation of the company.
3. To provide the leadership and supervision of all the personnel employed by the company.
4. To lead the pursuit of technology within the company to ensure that the company remains constantly on the cutting edge.
5. To enter into relationship with major corporations to provide consulting services in the Information Technology area.
6. To spearhead the continued development of the software product Galsoft and also lead the development team to develop additional products in the company's focus area.
7. To ensure the profitability of the company.
8. To enter into strategic alliances with large technology companies to ensure the availability of the latest technology to the company.
9. To lead the company in the pursuit of a Total Quality environment.
10 To ensure that all statutory compliance's are adhered to.
11 Any other responsibilities that may lead to the growth and profitability of the company.

The petitioner submitted letters from representatives of Sprint who attested to his work as a consultant. The petitioner submitted photocopies of quarterly income tax returns which indicate that it had between one and two employees each quarter.

On February 12, 1998, the director requested that the petitioner submit additional information. In response, the petitioner submitted various contracts made between the petitioner and different companies. These contracts were signed by the beneficiary as "president." The petitioner's former counsel stated that these documents establish the beneficiary's work as a manager or executive.

On appeal, counsel argues that the evidence of record "clearly and convincingly demonstrates that [the beneficiary] wields a great deal of power within his company and has the responsibility of making crucial business decision which will impact the overall development and distribution of company products." Counsel submits

pie charts concerning the beneficiary's responsibilities. Contrary to counsel's argument, the record is not convincing in demonstrating that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The description of the duties to be performed and that were performed by the beneficiary does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity. Rather, the evidence suggests that the beneficiary is a computer software consultant.

The next issue to be examined is whether the petitioner's foreign-owned parent company meets the definition of a multinational corporation.

8 C.F.R. 204.5(j)(2) indicates that "*multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States."

The petition was filed on November 13, 1997. Therefore, the petitioner must establish that [redacted] was doing business in two or more countries, one of which was the United States, as of the date of filing.

The petitioner submitted an undated document from the [redacted] Department of Economic Development which indicated that [redacted] was involved in computer system design and computer consultancy. The petitioner also submitted an article from the September 1996 issue of Onboard Services which cited [redacted] as the developer of a software program. In addition, the petitioner submitted: a United Arab Emirates Trade License which was issued to [redacted] on May 10, 1993 and expired on May 9, 1997; a United Arab Emirates Professional License which was issued to [redacted] on May 10, 1995 and expired on May 9, 1996; and invoices and receipts relating to Cadtech dated in 1996.

On February 12, 1998, the director requested that the petitioner submit additional information. In response, the petitioner submitted: another article from Onboard Services (the date of issue is illegible); a self-prepared financial statement for Cadtech dated December 31, 1997; audited financial statements for Cadtech dated August 21, 1994; a United Arab Emirates Trade License

which was issued to [redacted] on May 10, 1993 and expired on May 9, 1998; an "overview" of [redacted] and service agreements between [redacted] and individuals dated from March 1, 1997 to January 1, 1998.

On appeal, counsel states that [redacted] is still doing business. However, it must be noted that many of the business transactions conducted in the UAE are on a cash basis and the issuance of receipts and invoices are not a traditional business custom." Counsel submits photocopies of phone and water bills issued to [redacted] in 1998 and various invoices dated in 1998. The evidence submitted throughout the application process does not establish that [redacted] meets the definition of a multinational corporation. The bills, service agreements, licenses and invoices cannot be considered sufficient evidence because they do not document that [redacted] actually conducted business. There is no independent, documentary evidence (such as evidence of monetary transactions) that [redacted] was engaged in any type of business at the time the petition was filed. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, the petitioner has failed to establish that its foreign-owned parent company meets the definition of a multinational corporation.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.